

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

of his federal employment including daily exposure to loud noise caused by printing presses. He first became aware of his condition on August 15, 2012 and first realized that it was caused or aggravated by factors of his federal employment on October 14, 2013. A supervisor indicated that appellant's hearing loss occurred while he was off work, noting that appellant wore earplugs while around presses and that he had not worked since November 22, 2012 and had retired on November 29, 2013.

OWCP received copies of appellant's audiograms from December 9, 1986 through November 27, 2013. In a summary of the audiogram dated November 27, 2013, the reviewer recommended a complete hearing evaluation due to the results of the test. OWCP also received a position description and a summary of appellant's job history, as well as a letter from the employing establishment stating that, effective June 1, 2002, all employees needed to wear hearing protection in certain areas on premises.

In a report dated October 14, 2013, Dr. Christopher Mann, Board-certified in family and occupational medicine, examined appellant for complaints of binaural hearing loss and tinnitus. He noted that appellant had worked at the employing establishment for over 40 years and sustained a "persistent onset" of hearing loss, left greater than right on August 15, 2012. Dr. Mann noted that he worked around loud presses and machinery each day for at least two hours per day at 95 to 100 decibels (dBs) and that an audiogram performed on August 15, 2012 confirmed an abnormal hearing test indicating that hearing loss was present. He opined that appellant had sustained a work-related injury to both ears as a direct result of activities he performed in his position, and that within a reasonable degree of medical certainty, the loud noises he was exposed to in the course of his employment had caused his binaural hearing loss and tinnitus.

In a statement dated December 13, 2013, a supervisor explained the employing establishment's controversion of appellant's claim. He noted that appellant's audiograms did not show progressive loss at low levels and that high frequencies "above 4,000 cycles per second" were not used to determine loss. The supervisor further noted that appellant wore hearing protection and that his last audiogram before leaving his employment on November 22, 2012 did not demonstrate a ratable hearing loss.

In a development letter dated December 23, 2013, OWCP requested that appellant submit additional factual information pertaining to his exposure to loud noise, which he believed contributed to his hearing loss. By letter of even date, it requested additional information from the employing establishment, including copies of all medical examinations pertaining to hearing or ear problems on both preemployment examination and all audiograms.

On February 12, 2014 OWCP referred the case record, including a statement of accepted facts (SOAF) and lists of questions to Dr. Donald N. Matheson, a Board-certified otolaryngologist, for a second opinion evaluation. In a February 26, 2014 report, Dr. Matheson examined appellant and administered an audiogram. He diagnosed high-frequency hearing loss with good discrimination, related to long-term noise exposure. Dr. Matheson indicated that appellant's hearing loss was due to noise exposure encountered in appellant's federal civilian employment. He further found that, based on the results of the February 26, 2014 audiogram, the impairment calculations under the American Medical Association, *Guides to the Evaluation of Permanent*

*Impairment*<sup>2</sup> (A.M.A., *Guides*) revealed a monaural loss of zero percent in each ear.<sup>3</sup> Dr. Matheson indicated that tinnitus was present and added five percent to arrive at a total permanent binaural hearing impairment of five percent.

Appellant responded to OWCP's inquiries by letter dated February 23, 2014. He stated that he first noticed his hearing loss on August 15, 2012 and first realized it was related to noise exposure in the workplace on the same date. Appellant described his employment history and noted that he had no preexisting issues with his hearing.

On May 8, 2014 OWCP referred the case record, including Dr. Matheson's February 26, 2014 report and audiogram, to a district medical adviser (DMA) to determine whether appellant had a ratable hearing loss. In a May 12, 2014 report, Dr. Henry Mobley, a Board-certified internist serving as the DMA, reviewed appellant's medical records, the SOAF, and Dr. Matheson's February 26, 2014 report and audiogram. He found that the date of maximum medical improvement (MMI) was February 26, 2014 and that appellant had hearing loss of zero percent under the A.M.A., *Guides*. The DMA noted that although Dr. Matheson had added five percent permanent impairment for tinnitus, this was contrary to the A.M.A., *Guides*, which only permitted the addition of up to five percent for tinnitus to a measureable hearing impairment, and because appellant did not have a measureable hearing impairment the addition was improper. The February 26, 2014 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) and revealed findings for the right ear of 20, 10, 20, and 40 dBs and for the left ear of 15, 10, 30, and 40 dBs. The total for the left ear was 95, while the total for the right ear was 90. These totals were divided by four, resulting in 23.8 for the left ear and 22.5 for the right ear. These averages were then reduced by the 25 dBs fence, resulting in zero percent monaural loss for both ears, and zero percent binaural loss. The DMA thus concluded that appellant did not have a ratable permanent hearing loss, however, recommended authorization for hearing aids.

By decision dated July 9, 2014, OWCP accepted appellant's claim for bilateral hearing loss due to noise. On September 16, 2014 it authorized hearing aids for him.

In a letter dated November 24, 2014, Dr. Mann noted that appellant had reached MMI as of that date and he rated his hearing loss in his better ear at 12 percent and in his poorer ear at 52 percent, arriving at a binaural hearing loss of 18.6 percent. Adding 5 percent for the condition of tinnitus, he arrived at a final binaural hearing impairment of 23.6 percent.

On June 9, 2015 appellant filed a claim for a schedule award (Form CA-7).

By decision dated July 14, 2015, OWCP found that appellant's hearing loss was not sufficiently severe to be considered ratable and he was therefore not entitled to schedule award compensation. It further found that he was entitled to medical benefits, including hearing aids.

On July 27, 2015 appellant requested a review of the written record before OWCP's Branch of Hearings and Review. He resubmitted the November 24, 2014 report of Dr. Mann, his own

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> Dr. Matheson noted that the audiometer had last been calibrated on January 3, 2014.

statement dated February 23, 2014, and audiograms taken during his employment. Appellant also submitted a report dated October 28, 2015 from Dr. Mann, which noted the permanency of appellant's hearing loss and his effective use of hearing aids.

By decision dated December 17, 2015, the hearing representative affirmed OWCP's July 14, 2015 decision. He concluded that OWCP had properly developed appellant's schedule award claim, that Dr. Mann was not an appropriate medical specialist as he was a family practitioner, and that the opinions of Drs. Matheson and Mobley carried the weight of medical evidence.

On August 13, 2016 appellant requested reconsideration. With his request, he enclosed a letter dated August 1, 2016 from Dr. Mann who explained that as appellant's attending physician, he took the last hearing test available nearest to his last point of employment, dated November 7, 2013, in order to perform his impairment rating. Dr. Mann noted that appellant had a well-documented decline in his hearing during the last two to three years of his federal employment. He explained that Drs. Matheson and Mobley had drawn their conclusions based on the later test of February 26, 2014, which was three months after appellant's regular exposure to noise in his federal employment. Dr. Mann opined that this test should be afforded equal weight to the tests performed during appellant's employment. Appellant also submitted the results of audiometric testing and a report from an audiologist dated November 9, 2012 and November 11, 2013. On the results of audiometric testing, the audiologist noted 12 percent hearing loss in the right ear and 52 percent hearing loss in the left ear. In the report, the audiologist recommended hearing aids.

By decision dated October 3, 2017, OWCP affirmed the December 17, 2015 decision finding that the latest report from the audiologist had not included the date of calibration of audiometric testing equipment, rendering it insufficient to meet test environment standards. It further found that the audiologist had not properly calculated impairment in each ear. OWCP again noted that Dr. Mann's report had no bearing on a hearing loss claim as he was not an appropriate specialist, and that Dr. Matheson and the DMA carried the weight of the medical evidence.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

concurrent in such adoption.<sup>6</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>7</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>8</sup> With respect to a schedule award, it is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury.<sup>9</sup> A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.<sup>10</sup> The medical evidence must include a detailed description of the permanent impairment.<sup>11</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>12</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>13</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>14</sup> The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>15</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>16</sup>

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<sup>6</sup> *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *C.U.*, Docket No. 18-1480 (issued February 6, 2019); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *D.S.*, Docket No. 19-0292 (issued June 21, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>10</sup> See *Rose V. Ford*, 55 ECAB 449 (2004).

<sup>11</sup> See *Vanessa Young*, 55 ECAB 575 (2004).

<sup>12</sup> *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); see also 20 C.F.R. § 10.404.

<sup>13</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>17</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>18</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss for schedule award purposes.

The Board finds that the February 26, 2014 audiogram is the only study of record performed within OWCP's certification protocols, as the November 9, 2012 and other testing did not document proper calibration. This audiogram, which complied with all protocols of the A.M.A., *Guides*, demonstrated record values at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz of 20, 10, 20, and 40 dBs on the right, for a total of 90 dBs. This figure, when divided by four, resulted in an average hearing loss of 22.5 dBs. The average of 22.5 dBs, when reduced by the 25 dBs fence, resulted in zero percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000, and 3,000 Hz revealed losses of 15, 10, 30, and 40 dBs, for a total of 95 dBs. This value, when divided by four, resulted in an average hearing loss of 23.8 dBs, which, when reduced by the 25 dBs fence, resulted in zero percent monaural hearing loss of the left ear.

The Board finds that, as the February 26, 2014 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award for his accepted hearing loss condition. While Dr. Matheson noted that he had tinnitus and added five percent to his impairment rating based on this observation, the DMA correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.<sup>19</sup>

Appellant may request a schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

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<sup>17</sup> A.M.A., *Guides* 249; *see also* *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6f.

<sup>19</sup> *See* *W.G.*, Docket No. 17-1090 (issued March 12, 2018); *M.F.*, Docket No. 16-1296 (issued December 15, 2016); *Juan A. Trevino*, 54 ECAB 358, 360 (2003).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss for schedule award purposes.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board